

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

JOHN CLEMENT and EDGEFUND
CAPITAL, LLC,

Defendants.

CASE NO. 11cv1034-LAB (WVG)

**ORDER TO TURN OVER FROZEN
FUNDS**

Almost six years ago, the SEC filed a complaint for securities fraud against John Clement and his company, Edgefund Capital. Clement co-owned Edgefund with his wife, Cheryl Kilmer. (Dkt. 1). The Court issued a permanent injunction freezing the funds in 12 accounts. (Dkt. 29 at 5–6.). A year later, Clement pled guilty to wire fraud and the court ordered him to pay about \$5 million to compensate eleven victims. *United States v. Clement*, 11cr4198 (Dkt. 40.)

This fall, the SEC filed a motion to unfreeze funds. (Dkt. 31.) Clement, Edgefund Capital LLC, and Kilmer didn't file an opposition. The Court ordered the Defendants and Kilmer to file a memorandum by November 11, 2016, explaining why the Court shouldn't grant the SEC's motion. (Dkt. 33.) There was no response.

The Court construes the failure to oppose "as consent to granting the motion." Standing Order ¶ 4; Local Rule 7.1; see *Velasquez v. California*, 68 F. App'x 833, 834 (9th

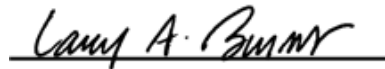
1 Cir. 2003) (affirming order granting motion for failure to oppose).

2 The Court also agrees with the SEC that the money in Kilmer and her son Scott
3 Clement's accounts is community property subject to the criminal judgment. Cal. Fam. Code
4 § 910(a); see *United States v. Berger*, 574 F.3d 1202, 1206 (9th Cir. 2009) (finding that
5 although a fraudster's wife wasn't "a party to, nor guilty of any criminal wrongdoing," "her
6 community property interest" was still subject to "the restitution order entered by the district
7 court").

8 The Court orders that all frozen money in the bank accounts of John Clement, Cheryl
9 Kilmer, and Scott Clement be turned over to the Clerk. (Dkt. 29 at 5-6). The money shall be
10 added to the restitution fund and distributed to Clement's victims according to the terms of
11 the criminal restitution order.

12 **IT IS SO ORDERED.**

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14 DATED: December 8, 2016

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16 **HONORABLE LARRY ALAN Burns**
17 United States District Judge
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